IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 723 of 1996

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT - Appellant(s)
Versus
SONDA BAVA KOLI & 17 - Opponent(s)

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Appearance :
MR SP HASURKAR APP for Appellant(s) : 1,
NOTICE SERVED for Opponent(s) : 1 - 6, 8,10 - 15,17 - 18.
None for Opponent(s) : 7, 9, 16,

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 01/10/2007

ORAL JUDGMENT

1.0 This appeal is directed against the judgment and order dated 17.05.1996 passed by the learned Judicial Magistrate, First Class, Rajula in Criminal Case No. 1040 of 1998 whereby, the respondents – accused persons were acquitted of the offences

alleged against them.

2.0 The brief facts of the prosecution case are as under;

2.1 On 17.04.1989, at around 1000 hrs., while the complainant and two other persons were traveling in a bullock-cart through the outskirts of their village, the respondents - accused persons stopped the cart at a lonely place and surrounded them. Thereafter, the respondents attacked one of the persons traveling in the bullock-cart namely, Pancha Devshi with deadly weapons and when other persons tried to rescue him from further attacks, the respondents also attacked them. As a result of the said incident, a huge crowd gathered at the said place and the respondents fled from the scene of offence.

2.2 The injured persons were then taken to Rajula Hospital for necessary treatment and, thereafter, a complaint came to be filed against the accused persons for offences punishable u/s. 147, 148, 149, 323, 324, 325 & 326, 427, 451, 429 of the Indian Penal Code and Section 135 of the Bombay Police Act.

2.3 Investigation was carried out and statements of several witnesses were recorded. 'Panchnama' of the scene of offence was also prepared. On the basis of the evidence so collected, the accused persons were arrested and sent to judicial custody. Thereafter, charge-sheet was filed against the accused persons and trial was conducted. At the end of trial, the learned J.M.F.C., Rajula acquitted the respondents from the offences alleged against

them. Being aggrieved by the said order passed by the learned Magistrate, the appellant – State has approached this Court by way of this appeal.

3.0 Heard learned counsel for the respective parties and perused the entire documents on record. The principles which would govern and regulate the hearing of appeal by this Court against an order of acquittal passed by the trial Court have been very succinctly explained by the Apex Court in a catena of decisions. This Court has the power to re-consider the whole issue involved in the appeal, re-appraise the evidence and come to its own conclusion and findings in place of the findings recorded by the trial Court, if the said findings are against the weight of the evidence on record or, in other words, perverse. Even in a recent decision of the Apex Court in the case of ***State of Goa v. Sanjay Thakran & anr. reported in (2007) 3 S.C.C. 755***, the Court has reiterated similar principle. In Para-16 of the said decision, the Court has observed as under ;

> "16. From the aforesaid decisions, it is apparent that while exercising the powers in appeal against the order of acquittal the Court of appeal would not ordinarily interfere with the order of acquittal unless the approach of the lower Court is vitiated by some manifest illegality and the conclusion arrived at would not be arrived at by any reasonable person and, therefore, the decision is to be characterized as perverse. Merely because two views are possible, the Court of appeal would not take the view which would upset the judgment delivered by the Court below. However, the appellate Court has a

> power to review the evidence if it is of the view that the conclusion arrived at by the Court below is perverse and the Court has committed a manifest error of law and ignored the material evidence on record. A duty is cast upon the appellate Court, in such circumstances, to re-appreciate the evidence to arrive to a just decision on the basis of material placed on record to find out whether any of the accused is connected with the commission of the crime he is charged with".
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> [*Emphasis supplied*]

4.0 Having gone through the record, it appears that the prosecution case suffers from many shortcomings. The complaint in question was originally filed against 13 accused persons but, subsequently, the name of five other persons were added as accused persons. However, no explanation has come forward from the prosecution as to on what ground/s the said five persons were added as accused persons at a later stage.

5.0 Apart from that the prosecution case has not got any support from the evidence led by its witnesses as there are several contradictions in their depositions before the trial Court and their statements before the police authority and, therefore, the trial Court has rightly declared them as 'hostile'. Moreover, the Investigating Officer as well as the Medical Officer concerned, who were key-witnesses, have not been examined by the trial Court, as they have not remained present before the trial Court in spite of issuing several summons.

6.0 Considering the facts and circumstances of the case and the evidence discussed hereinabove, I am of the opinion that the trial Court was completely justified in acquitting the respondents from the offences alleged against them. In my view, the findings recorded by the trial Court are absolutely just and proper and in recording the said findings, no illegality or infirmity has been committed by it. I am in complete agreement with the findings, ultimate conclusion and the resultant order of acquittal recorded by the trial Court and, hence, find no reasons to interfere with the same. I am not discussing the evidence of each witness in detail in view of the observations made by the Apex Court in the case of ***State of Karnataka Vs. Hemareddy*** reported in ***A.I.R. 1981 S.C. 1417*** wherein it is held as under:

> "... This court has observed in *Girija Nandini Devi V. Bigendra Nandini Chaudhary (1967)1 S.C.R. 93: (A.I.R. 1967 S.C. 1124)* that it is not the duty of the appellate court when it agrees with the view of the trial court on the evidence to repeat the narration of the evidence or to reiterate the reasons given by the trial court. Expression of general agreement with the reasons given by the Court the decision of which is under appeal, will ordinarily suffice."

7.0 In the result, the appeal is dismissed. Office is directed to send the Records & Proceedings of the case, if lying with this Court, to the trial Court concerned forthwith.

[K. S. Jhaveri, J.]

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